

**SANITIZED DEC. 05-433 P – BY GEORGE V. PIPER – SUBMITTED FOR
DECISION 10/05/05 – ISSUED 10/12/05**

SYNOPSIS

PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET – Failure of the Petitioner to appear at hearing or to otherwise prove that the assessment is incorrect and contrary to law, in whole or in part, mandates that the same be upheld in *toto*.

FINAL DECISION

On June 16, 2005, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a personal income tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2002, for tax, interest through June 16, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on July 13, 2005.

Thereafter, by mail postmarked July 16, 2005, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and W. Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the

Petitioner, *see* W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. A computerized statement forwarded to Respondent by the Internal Revenue Service (“IRS”) showed that Petitioner had failed to report unemployment compensation that he received in tax year 2002.

2. Petitioner never presented any documentation proving that he did not owe West Virginia personal income tax on the unemployment compensation that he received in tax year 2002.

DISCUSSION

The only issue is whether Petitioner has shown that the assessment for tax year 2002 was incorrect and contrary to law, in whole or in part.

In this case, Petitioner has not carried his burden of proof in that regard, in that no showing whatsoever was made that the assessment is incorrect.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for

reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with his contention that he did not owe the tax in question.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for the year 2002, for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.